

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LOUIS WOLKENSTEIN,
Plaintiff,
v.
CAPITAL ONE BANK
(U.S.A.), N.A.,
Defendant.

) **Case No.:**
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) **JURY TRIAL DEMANDED**
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COMPLAINT

LOUIS WOLKENSTEIN (“Plaintiff”), by and through his attorneys,
KIMMEL & SILVERMAN, P.C., alleges the following against CAPITAL ONE
BANK (U.S.A.), N.A., (“DEFENDANT”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection
Act, 47 U.S.C. §227.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See
Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

1 3. Defendant regularly conducts business in the Commonwealth of
2 Pennsylvania, thus, personal jurisdiction is established.

3 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).
4

5 **PARTIES**

6 5. Plaintiff is a natural person residing in Scranton, Pennsylvania 18510.

7 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).
8

9 7. Defendant is a corporation with its principal place of business located
10 at 1680 Capital One Drive, McLean, Virginia 22102.

11 8. Defendant is a “person” as that term is defined by 47 U.S.C.
12 §153(39).

13 9. Defendant acted through its agents, employees, officers, members,
14 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
15 representatives, and insurers.
16

17 **FACTUAL ALLEGATIONS**

18 10. Plaintiff has a cellular telephone number that he has had for at least
19 one year.
20

21 11. Plaintiff has only used this phone as a cellular telephone.

22 12. Beginning in September 2015 and continuing thereafter, Defendant
23 called Plaintiff on his cellular telephone on a repeated and continuous basis each
24 day.
25
26

1 13. When contacting Plaintiff on his cellular telephone, Defendant used an
2 automatic telephone dialing system.

3 14. The automated calls would begin with a pre-recorded voice stating:
4 “Please hold” before calls were transferred to live agents.
5

6 15. Defendant’s telephone calls were not made for “emergency purposes”
7 as Defendant was attempting to collect a credit card account balance on two
8 separate accounts.
9

10 16. In early August 2015, Plaintiff spoke with Defendant’s representatives
11 and requested that their repeated calls stop immediately.

12 17. Once Defendant was told the calls were unwanted and to stop, there
13 was no lawful purpose to making further calls, nor was there any good faith reason
14 to place calls.
15

16 18. Despite Plaintiff’s clear revocation of consent, Defendant continued to
17 call Plaintiff multiple times per day.
18

19 19. Plaintiff was aware that Defendant was calling him because he spoke
20 to a male representative who identified their company name during calls.

21 20. These calls were frustrating and annoying for Plaintiff, especially
22 since Defendant called him while at work.
23

24 21. After Plaintiff’s request to stop calling was ignored by Defendant, he
25 took measures to block their calls by downloading a blocking application.
26

1 22. Upon information and belief, Defendant conducts business in a
2 manner which violates the Telephone Consumer Protection Act.

3 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**
4 **PROTECTION ACT**

5 23. Plaintiff incorporates the forgoing paragraphs as though the same were
6 set forth at length herein.

7
8 24. Defendant initiated automated calls to Plaintiff using an automatic
9 telephone dialing system.

10 25. Defendant's calls to Plaintiff were not made for emergency purposes.

11
12 26. Defendant's calls to Plaintiff, on and after early August 2015, were not
13 made with Plaintiff's prior express consent.

14 27. Defendant's acts as described above were done with malicious,
15 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
16 under the law and with the purpose of harassing Plaintiff.

17
18 28. The acts and/or omissions of Defendant were done unfairly,
19 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
20 lawful right, legal defense, legal justification or legal excuse.

21
22 29. As a result of the above violations of the TCPA, Plaintiff has suffered
23 the losses and damages as set forth above entitling Plaintiff to an award of
24 statutory, actual and treble damages.

1 WHEREFORE, Plaintiff, LOUIS WOLKENSTEIN, respectfully prays for a
2 judgment as follows:

- 3 a. All actual damages suffered pursuant to 47 U.S.C. §
4 227(b)(3)(A);
5
6 b. Statutory damages of \$500.00 per violative telephone call
7 pursuant to 47 U.S.C. § 227(b)(3)(B);
8
9 c. Treble damages of \$1,500.00 per violative telephone call
10 pursuant to 47 U.S.C. §227(b)(3);
11
12 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
13
14 e. Any other relief deemed appropriate by this Honorable Court.

15 **DEMAND FOR JURY TRIAL**

16 PLEASE TAKE NOTICE that Plaintiff, LOUIS WOLKENSTEIN,
17 demands a jury trial in this case.

18 Respectfully submitted,

19 DATED: September 1, 2016

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